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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CARL FOUST,  
  
Plaintiff,  
  
v.  
  
ALI, et al.,  
  
Defendants.

No. 2:19-CV-2579-JAM-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

On October 26, 2021, the Court issued an order addressing Plaintiff’s second amended complaint. See ECF No. 82. The Court determined that Plaintiff’s Claim II against Defendant Ali for retaliation is the only cognizable claim. See id. at 3. The Court provided Plaintiff an opportunity to file a third amended complaint within 30 days to cure the defects identified in the October 26, 2021, order as to all other claims/defendants. See id. at 7. Plaintiff was cautioned that, if he elected not to file a third amended complaint within the time provided, the action would proceed on the second amended complaint and the defective claims/defendants would be dismissed. See id. To date, Plaintiff has elected not to file a third amended complaint. The Court, therefore, for the reasons outlined in the October 26, 2021, order will recommend dismissal of all claims/defendant except Plaintiff’s Claim II against Defendant Ali for retaliation.

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Based on the foregoing, the undersigned recommends that:

1. This action proceed on the second amended complaint on Plaintiff's Claim II against Defendant Ali for retaliation; and

2. All other claims and defendants be dismissed for failure to state a claim.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 8, 2021



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DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE